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**The Needs of the Lower Basin for Certainty Cannot be Divorced from Identical Needs in the Upper Basin**

10 The Lower Basin cannot be viewed in isolation from the Upper Basin. The Secretary has now taken the position that BUREC may operate CRSPA facilities to prevent Upper Basin development, at least development not politically favored by the Secretary. This position is dangerous to the position of the Upper Basin, despite any assurances that Colorado's negotiating team may have given to the other Upper Basin States. If BUREC can utilize CRSPA to prevent, rather than to aid, Upper Basin development, why should the Upper Basin believe that Lake Powell storage levels will remain inviolate, if indeed they will at all? Could a 14.85 maf storage level at Lake Mead trigger Compact delivery requirements at the other, smaller CRSPA reservoirs above Lake Powell?

Given BUREC's recent attempts to prevent Upper Basin development in Colorado, representing the majority of the Upper Basin's Compact Share, the opportunity afforded the Upper Basin to sue the Secretary to protect Lake Powell storage levels may not be a viable remedy.

**Inadequate Attention is Paid to the Delivery of "Surplus" Waters For Groundwater Banking in the Lower Basin**

Groundwater banking in the Lower Basin of genuine flood surplus flows is unobjectionable, and generally wise. The situation is different where the delivery of artificial surpluses, which require lowering Lake Mead storage levels, is made for groundwater banking.

11 To protect the Upper Basin, it is imperative that equalizing releases from Lake Powell not be made to Lake Mead to replace water delivered for groundwater banking. The 15-year agreement, and the DEIS, fail to account for the potential impact on the Upper Basin from groundwater banking in the Lower Basin.

The UPWA questions whether groundwater banking of other than flood surplus flows is a current, beneficial use in the Lower Basin for which deliveries of other than flood surplus flows are authorized for Compact purposes.

**The Protection Offered to the Upper Basin is Illusory Given Related Actions by the United States**

12 The UPWA thus brings a unique perspective to its comments. Though the 15-year agreement is ostensibly designed, in part, to offer assurance to the Upper Basin states, including Colorado, that its right to develop Upper Basin allocations will be protected, such protection appears to be illusory, at best. The United States is already moving aggressively to prevent Upper Basin development predicated upon its control of federally owned facilities, including CRSPA facilities.

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10: The statement that the "Lower Basin cannot be viewed in isolation from the Upper Basin", is a true and valid statement. In the analysis, both the Upper and Lower basins were considered. Future increased water development in the Upper Basin is incorporated into the analysis. Computer model simulations of the Colorado River used in the DEIS incorporate the 1996 Upper Basin depletion schedule, developed by the Upper Colorado River Commission in coordination with the Upper Basin States. For the FEIS, an updated depletion schedule, developed in 1999, was used. The computer modeling performed for all alternatives showed no instances where water stored in reservoirs above Lake Powell was required to be released to satisfy the requirements of the Colorado River Compact.

11: During the interim surplus criteria period, the agencies that have contracted for surplus water will use surplus water, when available, to meet direct water supply demands, as well as to provide a source of water for conjunctive use and storage programs. The delivery of water to Colorado River water users will be in accordance with the guidelines developed for the selected surplus alternative, if one is selected, and will be consistent with the Law of the River. The FEIS considered and evaluated the potential impact to the Upper Basin users resulting from the surplus alternatives. The analysis results indicated that the interim surplus criteria would have no significant effect on the Upper Basin users as a result of the interim surplus criteria.

12: Reclamation is required to take certain actions to administer United States obligations under the Endangered Species Act and we acknowledge that some actions to meet species protection mandates may affect river operations. Reclamation's required actions to protect and enhance habitat for threatened and endangered species in the United States should not be interpreted as opposition to Upper Basin development. The United States does not assume an obligation to mitigate for adverse impacts in Mexico, but supports joint cooperation projects that would benefit both the United States and Mexico. We acknowledge that in the long run, Upper Basin development will reduce the amount of surplus water available for delivery in the Lower Basin.

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Recent activities and litigation in the Lower Basin and in the Rio Grande raise concurrent concerns about future use of the Endangered Species Act to bypass statutory and Compact requirements in the name of species protection. The United States and numerous environmental groups are moving aggressively to utilize the Endangered Species Act to prevent additional water development in the Upper Basin and elsewhere, and to concurrently re-orient the use of federal water facilities and water operations to protect endangered species. The DEIS fails to analyze the likely impact of these activities and litigation upon the future operation of facilities in the Upper Basin and the Lower Basin. For example, in the Rio Grande drainage, the United States is asserting that its ownership of facilities allows it to mandate releases and bypasses to meet species protection goals under the ESA. A recent lawsuit by environmental groups in the United States and Mexico to protect endangered species in both countries has raised an issue regarding the ability of the Secretary to honor statutory or Compact commitments in the long term when faced with legal challenges to current patterns of operation. These activities do not occur in a vacuum when considering the fate of Upper Basin development, and raise immediate concerns about federal opposition to further Upper Basin development. The 15-year agreement contains no federal commitments protecting the Upper Basin.

The operational effects of Federal environmental initiatives, including the ESA, upon CRSPA facilities, critical to meeting Lower Basin needs during the 15-year agreement, must be evaluated. The U.S. is currently involved in litigation as both a plaintiff and a defendant, and the outcome of current ESA litigation on the 15-year agreement, and the Upper Basin, needs to be evaluated. Once again, these concerns are not theoretical, or in the future, but real, and present now. In Colorado, significant releases from Blue Mesa Reservoir are already contractually dedicated to endangered species protection. What is the cumulative impact of all these policies and actions on the Upper Basin and its human populations? The DEIS offers no such analysis.

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The DEIS further notes that lowering Lake Mead storage levels may create additional habitat for endangered species at several locations. There is no discussion of the arguments that could be made for such a situation becoming either permanent, or the object of additional protection. What effect would the creation of additional habitat at Lake Mead have upon equalizing flows from Lake Powell?

**The 15-year Agreement and the DEIS ignore the Need to Develop the Upper Basin as the Necessary Complement to Fair Implementation**

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The 15-year agreement has the effect of looking at major developments in the Lower Basin in isolation. Though the 15-year agreement may help to support the Upper Basin's already strong legal claim to develop its remaining Compact share, the practical effect is far more limited. The reasons for those limitations are discussed above.

The Upper Basin has no reason to be sanguine about its future prospects without concurrent action to develop its own rights. The United States and environmental groups are actively working now to put in place legal requirements to make significant Upper Basin development difficult or impossible. Thus, re-orientation of Lower Basin allocations should not be considered in isolation

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13: Additional riparian habitat could develop at various locations around Lake Mead when lower surface elevations occur. As discussed in Section 3.8, lower elevations could occur under baseline conditions and each of the alternatives depending primarily upon future hydrologic conditions and Lake Mead water releases. The EIS recognizes that fluctuating reservoir elevations would continue under baseline conditions and the alternatives, which would likely result in future periods of both inundation and exposure of these areas. The proposed action would not change 602(a) equalization requirements.

14: Reclamation and other federal agencies have complex missions and sometimes conflicts arise on issues. For example, Reclamation's legal responsibility to administer the Endangered Species Act affects river operations and the timing of water deliveries. Reclamation does not oppose Upper Basin development but must fulfill its legal obligations under ESA, NEPA and other applicable federal legislation. We acknowledge that the construction and operation of water development projects has become more complicated with additional laws and environmental considerations, but such considerations cannot be ignored.

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from the crying need for Upper Basin development to avoid major shortages. These areas of shortage will include the Colorado Front Range communities, which are not protected by the agreement.

Pur simply, the protection of municipal uses in the Lower Basin while municipal uses are actively prevented in the Upper Basin raises numerous issues which have not been answered by the DEIS. Such actions in the Upper Basin are directly related to the likely permanence of the use of Colorado generated surpluses in the Lower Basin, and in California particularly.

**Conclusion**

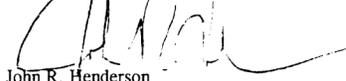
Though the 15-year agreement has some merit, it, like the Colorado River Compact itself, cannot be considered in isolation. The only real protection which the Upper Basin has will come with the development of its own potential, including the ability of Colorado to protect its own citizens from the effects of diminished supply and drought. In the meantime, the DEIS fails to account for federal aggressiveness in attempting to foreclose the very development which, in theory, the 15-year agreement attempts to protect. This is a matter critical to Colorado's water future, including the large urban populations of the Colorado front range. This human environment is plainly a major part of the NEPA equation, and must be addressed.

The DEIS fails to consider the threat to Lake Powell storage levels under drought conditions. The DEIS fails to consider the threat to Lake Powell storage levels from groundwater banking in the Lower Basin of other than flood surplus flows. The 15-year agreement and the DEIS fail to deal with the use of Lake Powell to equalize the delivery of artificial surpluses to the Lower Basin, and to the MWD in particular. Any threat to Lake Powell storage is a threat to the long term future of the Upper Basin. This is an issue of the first importance, but is not addressed.

Thank you for the opportunity to comment. Once again, we would like to renew our request for additional time to develop comments on the DEIS.

Sincerely,

VRANESH AND RAISCH, LLP



John R. Henderson

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cc: Union Park Water Authority

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